IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15/03/2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.22671 of 1993

Chandrasekaran ..Petitioner

Vs

1. The Inspector General,
Central Industrial Security Force,
Eastern Zone, 41, Karaya Road,
Park Circus,
Calcutta 17.

2. The Deputy Inspector General,
Central Industrial Security Force,
South one, Anna Nagar,
East TNHS Building,
Madras 102.

3. The Commandant,
Central Industrial Security Force,
SHAR Centre, Sriharikotta,
Andhrapradesh ..Respondents

Prayer:

Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the order in appeal in No.V-11014/81/92-A6(SZ)/6285 dated 27.7.1993 on the file of the third respondent and quash the same and consequently direct the respondents to pay all the dues without any deduction after ignoring all the deduction from the date of charge memo.

For Petitioner : Mr.V.Narayanan

For Respondents : Mr.M.Dhamotharan

O R D E R

N. PAUL VASANTHAKUMAR, J.

In this writ petition, petitioner seeks to quash the order in appeal in No.V-11014/81/92-A6(SZ)/6285 dated 27.7.1993 of the third respondent and to direct the respondents to pay all the dues without any deduction after ignoring all the deduction from the date of the charge memo.

2. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner was appointed as Security Guard in the Central Industrial Security Force in the year 1972 and was posted to CISF Unit, Durgapur (West Bengal) from 7.11.1988 to 5.7.1991. While the petitioner was serving in Durgapur, he was served with a charge memo dated 21.7.1989, which reads as follows,

(i) He was found absent from A & B Coy lines and the site office area on 16.6.89 from 0800 hrs to 1200 hrs without any leave or permission from his superior authority.

(ii) He reported to duty officer at main gate CISF control room for 'B' shift duty at about 1250 hrs on 24.6.89 in improper uniform in that he did not wear cap wilfully in violation of the order and approached for signature in his pocket book. He was asked by the duty officer to come in proper uniform but he did not obey and left for duty without obtaining signature in his pocket book and without wearing cap.

(iii) He reported to the duty officer at main gate Control room for 'B' shift duty at about 1245 hrs on 25.6.89 improper uniform in that he did ot put on cap wilfully in violation of orders when he did not obey and argued unnecessarily. When told by the in-charge, Control Room S.I.(E) T.J.Sabastina to come in proper dress he behaved insolent manner shouted horse flinging his hands with fingers too close to the eyes of the SI and made false accusation of being beaten and continued to remain in proper uniform.

(iv) He reported to the duty officer for 'B' shift duty at about 1245 hrs on 25.6.89 in improper dress and being asked by the duty officer SO in charge. , Control Room and AC(P) went back for the cap, returned to control room at about 1445 hrs on 25.6.1989 for his 'B' shift duty and reported to the duty officer SI(E) J.V.Jose again without cap which was kept folded in his rain coat. Though instructed by the duty officer to put on the cap, he did not obey and left the control room.

(v) He reported for 'C' shift duty at about 2050 hrs on 9.7.89 at CISF main gate Control Room in improper dress in that he did not wear cap and had put on PT shoe instead of jungle shoe/boot ankle black with ankle while in uniform, in violation of the orders. When asked by the duty officer to come in proper dress he refused to do so, made false statement of non-issue of cap and jungle shoe and remained in the same dress.

(vi) He was ordered to appear before condemnation Board at 1500 hrs on 11.7.89 with all clothing and equipment including the cap, life of which told to be expired, but he refused to produce the items and did not appear before the Board. Then he was asked to explain the reason for non-compliance of the above orders but he failed to explain reasons within the stipulated period.

(vii) He reported for 'C' shift armed patrolling duty inside the plant on 11.7.89 at CISF Main Gate Control Room at about 2050 hrs in improper dress in which he wore PT shoe instead of jungle shoe or boot ankle. He was asked by the duty officer to report for duty in proper uniform, but the Naik did not obey.

(viii) He reported for 'B' shift armed patrolling duty on 12.7.89 at about 1250 hrs in improper uniform in which he wore PT shoe instead of jungle shoe or book ankle. He was asked by the duty officer to report for duty in proper uniform but the Naik did not obey."

(b) Petitioner denied the said charges by submitting explanation. Thereafter an enquiry was conducted and by order No.V-15014/12/12/14/15/17/89/AD.III/3113 dated 12.5.1990, based on the same the disciplinary authority awarded punishment of reduction of pay by one stage from Rs.1090 to Rs.1070 in the time scale of pay for a period of one year with cumulative effect. Petitioner challenged the said award of punishment by preferring an appeal before the Deputy Inspector General, CISF, Eastern Zone, Calcutta.

(c) The appellate authority after going into the merits of the matter, set aside the order of the disciplinary authority by his proceedings dated 12.2.1991. The appellate authority ordered for de-novo enquiry from the stage of reply of the charge memorandum submitted by the charged official. One Assistant Commandant, CISF Unit, ASP, Durgapur, was appointed as Enquiry Officer to conduct the denovo enquiry into the charges referred earlier. The Enquiry Officer commenced the enquiry without waiting for review order from the DIG, CISF regarding the change of enquiry officer, the request made by the petitioner.

(d) Petitioner was transferred to CISF Unit, SHAR Centre, Sriharikotta (A.P.) and after the transfer, one Inspector from CISF Unit SHAR Centre was appointed as Enquiry Officer in the place of Assistant Commandant, A.S.P.Durgapur. Petitioner was not given opportunity to appear for enquiry as he was given other duties on the dates of enquiry and he was set exparte. Further the revision filed by the petitioner against the remand order was pending and no reply from the Inspector General, Eastern Zone, Calcutta, was received. The Enquiry Officer submitted his findings holding that all the charges framed against the petitioner are proved.

(e) During pendency of the denovo enquiry, petitioner submitted representation by stating that he has filed a review petition before the Inspector General, Eastern Sector, Calcutta, against the order of the appellate authority, Durgapur. No order was passed by the Inspector General, Eastern Sector. The Enquiry Officer's finding was considered by the disciplinary authority and an order of removal from service was passed on 19.8.1992. Petitioner challenged the said order of removal by filing appeal to the DIG, CISF, southern zone. The appellate authority rejected the appeal by order dated 27.7.1993 and therefore petitioner filed this writ petition.

(f) The case of the petitioner is that he has not deliberately absented from Unit line Barak on 16.6.1989 from 8 hours to 12 hours and the petitioner was not given new clothing and cap by the Office and therefore he was not proper in his uniform for which the said charges were framed. Even after finding that all the charges as proved, original disciplinary authority thought fit to impose a punishment, withholding of increment for one year with cumulative effect and when the petitioner filed appeal alleging violations in the procedures, the appellate authority set aside the said punishment with a direction to conduct denovo enquiry from the stage of petitioner's explanation, meaning thereby the charges levelled against the petitioner and the explanation submitted by the petitioner are retained. It is also submitted that the petitioner's revision against ordering of denovo enquiry was pending before the Inspector General, Eastern Zone and during the pendency of the appeal, denovo enquiry was conducted in spite of the objections raised by the petitioner. On enquiry

days, petitioner was given other duties in outstations and therefore petitioner could not attend the enquiry and as such petitioner was prevented from attending even the denovo enquiry proceedings and the appeal filed was also erroneously rejected. Therefore petitioner prayed for setting aside the order of removal from service and prayed for reinstatement with backwages and continuity of service.

3. The respondents filed counter affidavit wherein it is stated that the respondents Department is a disciplined force like armed force. The petitioner left his Coy Barack and remained absent from 8 hours to 12 hours on 16.6.1989 without any permission from the competent authority. It was corroborated with the statement of PW-1 and GD entry. Hence the petitioner unauthorisedly absented from duty during the above four hours without permission or intimation. The clothing and equipment items issued to the CISF personnel are required to be produced for declaring them as condemned before the Condemnation Board either after expiry of its serviceability period or damage before the period of expiry for getting new one in place of such condemned articles. Petitioner, in spite of the request made by the department to produce all his clothing and equipment including the cap issued to him, before the Condemnation Board at 15.00 hours on 11.7.1989, he failed to produce or place the kit items before the Board. Unless the Condemnation Board issue a certificate, it is not possible to issue new uniform and cap in place of the condemned ones. Hence the petitioner's defences made for the said charges are not acceptable and during the denovo enquiry petitioner wilfully absented on the ground that the revision before the Inspector General, Eastern zone was pending. The charges having been proved, the disciplinary authority issued the order of punishment which was confirmed by the appellate authority and therefore there is no illegality in the order of removal of the petitioner from service.

4. The learned counsel for the petitioner submitted that the charges are baseless and the crux of the charges is that the petitioner absented for four hours and was not wearing proper uniform and cap and for the alleged absence it was submitted that the petitioner was inside the campus only and without noting the same, GD entry was made and therefore petitioner was actually present on the particular four hours and the non-supply of new items of uniform and cap was the reason for not wearing proper uniform and cap for which the department alone can be blamed and the petitioner cannot be proceeded with. The learned counsel also argued that the then disciplinary authority for the very same charges has chosen to impose a punishment of withholding of increment for one year with cumulative effect and the department thought fit that the charges are only minor delinquencies and after denovo enquiry for the very same set of charges, the order of removal from service is passed, which shows the vindictive attitude and also the mala fide exercise of power against the petitioner and therefore the order of removal from service is unproportionate and unauthorised. The same was also not considered by the appellate authority and therefore prayed for allowing the writ petition by setting aside the order of removal from service with backwages and continuity of service.

5. The learned counsel for the respondents submitted that the charges having been proved even after denovo enquiry, the disciplinary authority thought fit to remove the petitioner from service, the appellate authority confirmed the same and if at all the petitioner is aggrieved, he could have filed revision before the department under Rule 49 of the Central Industrial Security Force Rules, 1969, and filing writ petition when there is availability of alternative remedy is not maintainable. The learned counsel also submitted that the petitioner failed to attend denovo enquiry and he has absented from duty and refused to turn up in proper uniform and therefore the order of removal from service is legal.

6. We have considered the rival submissions made by the learned counsel for the writ petitioner as well as the respondents.

7. The point in issue is whether the respondents are justified in conducting denovo enquiry while the revision before the Inspector General was pending as against the order to conduct denovo enquiry and the punishment imposed against the petitioner for the alleged charges, even assuming it is proved, is proportionate to the gravity of the charges.

8. Even though eight charges are framed as extracted above, as explained in the counter affidavit in page 23 ground (c), the basic substance of all the charges was that the petitioner had wilfully absented himself from the office area for four hours and that he had wilfully refused to turn up in proper uniform. The absence from office campus as alleged in the charge memo is only for four hours, for which the petitioner has stated that he was in office premises only and without noting his presence, the incharge Officer noted absence in the general diary. The reason for not wearing proper uniform as contended by the petitioner is that the earlier uniform and cap became old and new uniform and cap were not supplied. However, the reason stated by the department is that the competent authority viz., the Condemnation Board has not issued certificate to condemn the uniform and cap so as to enable the petitioner to get new uniform and cap.

9. The vital facts in this case as pleaded is that originally for the same set of eight charges, the department conducted enquiry and imposed punishment of withholding of increment for one year with cumulative effect even after holding that all the eight charges are proved. The petitioner has challenged the said order by filing appeal. In the appeal the appellate authority found certain procedural flaws and set aside the punishment and remitted the matter to the disciplinary authority to conduct fresh enquiry by retaining the charge memo and the explanation submitted. Hence it is clear that no fresh charge memo or any additional charge against the petitioner is issued. Petitioner filed revision before the Inspector General, Eastern Zone, against the order of remand as per Rule 49 of the Central Industrial Security Force Rules, 1969, and no order was passed by the Inspector General even according to the counter affidavit. During the pendency of the revision petition enquiry was conducted as per the remand order, for which the petitioner admittedly raised objections.

10. From the counter affidavit filed and the submissions made by the learned counsel for the respondents it is clear that under rule 49 of the Central Industrial Security Force Rules, 1969, statutory revision is available. Petitioner having filed a revision against the order of remand, respondents are not justified in proceeding with the denovo enquiry even after objection raised by the petitioner. Petitioner cannot be find fault with for not appearing in the denovo enquiry when the revision petition filed before the Inspector General of Eastern Zone was pending and even according to the counter affidavit reply from Inspector General, Eastern Zone, Calcutta was given only on 24.6.1992. If the petitioner was given an opportunity to appear for enquiry after the disposal of the revision petition, he could have very well explained as to whether he was present in the office premises during the four hours of the alleged absence and whether he was supplied with proper uniform and cap by the respondents. Without the presence of the petitioner, denovo enquiry was conducted based on which the charges are found proved. Admittedly the denovo enquiry was conducted while the review filed by the petitioner before the Inspector General, Eastern Zone, Calcutta, was pending and therefore the petitioner is justified in not attending the denovo enquiry. Hence we are of the view that conducting denovo enquiry during the pendency of review petition is clearly illegal.

11. For the very same charges, which were already found proved, the department thought fit to impsoe punishment of withholding an increment for one year with cumulative effect. However, the Disciplinary Authority now chosen to remove the petitioner from service. There is no justification or valid reason stated either in the impugned order or in the counter as to why, for the very same set of charges earlier lesser punishment was imposed and subsequently an order of removal from service is passed.

12. The learned counsel for the respondent submitted that even if this court come to the conclusion that the order of removal from service is found erroneously, the matter may be remanded to the disciplinary authority for conducting fresh enquiry and proceed in accordance with law. We are unable to accept the said request of the learned counsel for the respondents in view of the fact that the alleged charges are relating to the year 1989. Now more than 16 years have passed and at this stage no purpose will be served by remanding the matter back to the disciplinary authority to conduct fresh enquiry and pass orders. Petitioner is out of employment from 12.2.1991 and at this stage it is inequitable to remit the matter for fresh enquiry because of long lapse of time.

13. The respondents are also not justified in seeking dismissal of the writ petition on the ground of availability of alternative remedy by stating that under rule 49, petitioner could have filed revision before the department. This writ petition was admitted on 5.1.1994 and it is pending on the file of this Court for the past over 12 years. Hence the petitioner cannot be directed to avail alternate remedy at this stage, particularly when we find that the conduct of enquiry during the pendency of revision, setting the petitioner exparte and the punishment imposed are too harsh and contrary to the earlier order of withholding the increment for one year with cumulative effect. It is well settled in law that the existence of alternate remedy is not a bar in invoking the jurisdiction of this Court under Article 226 of the Constitution of India as held by the Honourable Supreme Court in various decisions.

(a) In the decision reported in AIR 1958 SC 86 (State of Uttar Pradesh v. Mohammad Nooh) the Honourable Supreme Court observed thus,

" .... It must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned Chief Justice added:

"It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari."
In the result this Court held that the existence of other legal remedies was not per se a bar to the issue of a writ of certiorari and that the Court was not bound to relegate the petitioner to the other legal remedies available to him."

(b) In the Constitution Bench decision reported in AIR 1961 SC 1506 (A.V.Venkateswaran v. R.S.Wadhwani) in paragraph 10, the Honourable Supreme Court held as follows,

"10. The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor-General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the

petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

(c) In Sales Tax Officer, Navgaon v. Timber & Fuel Corpn., (1973) 2 SCC 292 = AIR 1973 SC 2350, in paragraph 3, it is held thus,

"3. The High Court came to the conclusion that though it was open to the assessee to proceed under the provisions of the Sales Tax Act as against the impugned order, under the circumstances of the case it was appropriate for it to interfere with the impugned order at that stage itself and quash the proceedings. The question whether the petition should have been entertained or not was entirely within the discretion of the High Court. It is true that it was open to the High Court to decline to interfere with the proceedings at that stage. It could have directed the assessee to proceed under the provisions of the Sales Tax Act. But in our opinion the High Court rightly, on the facts and circumstances of the case, thought that this was a fit case where it should interfere with the order made by the Sales Tax Officer. Hence, we see no reasons to interfere with the discretion exercised by the High Court."

(d) In State of U.P. v. Indian Hume Pipe Co. Ltd., (1977) 2 SCC 724 = AIR 1977 SC 1132 in paragrapoh4, the Honourable Supreme Court held thus,

"4. ..... there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Article 136 of the Constitution to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention."

(e) In AIR 1985 SC 1147 (Ram and Shyam Co. v. State of Haryana) in paragraph 9 it is held as follows,

"9. ..... Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art.226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in The State of Uttar Pradesh v. Mohammad Nooh 1958 SCR 595: (AIR 1958 SC 86) it is observed 'that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy.' It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Art.226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. ....."

(f) In the decisions reported in AIR 1999 SC 1786 (State of Himachal Pradesh v. Raja Mahendra Pal) in para 6 the Honourable Supreme Court held that availability of alternate remedy does not debar Court from granting appropriate relief to the citizen under peculiar and special facts.

(g) In 2005 (5) Supreme 161 (State of H.P. & Others v. Gujarat Ambuja Cement Ltd. & Another) in para 19, the Honourable Supreme Court held thus,

"19. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction."

14. The petitioner has filed an affidavit before this Court on 7.3.2007 wherein he has stated that from the date of removal from service i.e, from 19.8.1992 he remained unemployed without any income with his wife and children and his family is surviving by his wife doing household and domestic works in the nearby houses and also by raising loans from the relatives and hand loans from others against security of ancestral properties and some of the properties are sold in auction for recovery of the loans. Hence the petitioner has prayed for ordering the writ petition with back wages and continuity of service.

15. Insofar as the grant of relief in this writ petition is concerned, admittedly the petitioner is out of employment from 19.8.1992. His non-employment after removal from service is stated in the affidavit. No contra material is made by the respondents to state that the petitioner is gainfully employed. However, the fact remains that the petitioner was not working all these years and therefore he is not entitled to get full salary for the period during which he was not allowed to work due to removal from service. Hence, we are of the view that to meet the ends of justice, petitioner shall be reinstated with 50% of backwages from 19.8.1992 till the date of his reinstatement. Petitioner having been out of employment from 19.8.1992, 50% of the backwages is denied and that will be treated as punishment for the delinquencies said to have been committed by the petitioner.

16. The writ petition is ordered in the above terms. Respondents are directed to reinstate the petitioner with continuity of service and other benefits with 50% of backwages within one months from the date of receipt of copy of this order. No costs.

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To

1. The Inspector General,
Central Industrial Security Force,
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41, Karaya Road,

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